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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

DONNA WATKINS,

Plaintiff and Respondent,

v.

JOHN WILSON,

Defendant and Appellant.

B139048

(Los Angeles County
Super. Ct. No. YS006944)

APPEAL from an order of the Superior Court of Los Angeles County, Jean E.
Matusinka, Judge. Affirmed.

Baha & Associates and Daniel S. Baha for Defendant and Appellant.

Donna Watkins, in pro. per., for Plaintiff and Respondent.

INTRODUCTION

After defendant and appellant John Wilson (“Wilson”) and plaintiff and respondent Donna Watkins (“Watkins”) became immediate neighbors, troubles between them arose. Both petitioned for restraining orders against the other. Following a trial, the trial court entered a permanent restraining order against Wilson, and ordered him to pay \$7,000 in attorney fees to Watkins. The trial court denied Wilson’s request for a restraining order against Watkins and his request for attorney fees.

Wilson appeals the judgment granting Watkins a permanent restraining order against him and the attorney fee award. Wilson also appeals the denial of his request for a restraining order against Watkins.

For the reasons stated below, we find the trial court’s judgment is supported by substantial evidence. In addition, we find the trial court properly denied Wilson’s request for a restraining order against Watkins. Accordingly, we affirm.

PROCEDURAL SUMMARY

On January 27, 1999 Watkins, representing herself, obtained a temporary restraining order against Wilson, preventing him from harassing, conducting surveillance of, or coming within 100 yards of Watkins. After multiple hearings and after he had been arrested for violating the restraining order, on April 28, 1999, Wilson filed a petition for a restraining order against Watkins.

In May of 1999, both parties and several witnesses testified at trial. The court found “the plaintiff has testified and I can agree, that it is her perception that she was in

fear of stalking or being harassed or whatever. That is the important thing.” The court, while reluctant to grant Wilson a restraining order against Watkins for fear of gamesmanship, nevertheless issued restraining orders against both parties; a three-year restraining order against Wilson; and a temporary restraining order against Watkins to expire on August 23, 1999, the day the court set to hear the issue of attorney fees.

On August 23, 1999, Wilson filed a declaration seeking \$21,000 in attorney fees and a permanent restraining order against Watkins. That day, Watkins filed her request for \$12,500 in attorney fees and costs. The August 23, 1999 hearing was continued to October 7, 1999. In the interim, Wilson filed a September 30, 1999 declaration in support of his additional request for attorney fees, stating therein that he was convicted for violating the January 27, 1999 restraining order for taking pictures of Watkins.

Watkins and Wilson attended the October 7, 1999 hearing, following which, the court issued a permanent restraining order against Wilson and awarded Watkins \$7,000 in attorney fees. The trial court denied Wilson’s request for a restraining order against Watkins, as well as his request for attorney fees.

On January 14, 2000, Wilson filed a timely notice of appeal.

FACTUAL BACKGROUND

Watkins met Wilson in March of 1998, when Wilson lived a block or two from Watkins. Watkins testified that in April or May 1998, she went on some dates with Wilson, but characterized their relationship as casual and denied the parties had any physical contact. Wilson did not testify as to the nature of the parties’ relationship.

After Wilson's residence was sold in the summer of 1998, Watkins helped him relocate to the apartment adjacent to her building, into which Wilson moved in July of 1998. At this point, Watkins testified that she made a conscious effort to keep Wilson at arms length as he had started to visit all the time. At trial, Wilson called his girlfriend, Dawn Reinsch, to the stand, who contradicted Watkins, testifying she saw Watkins and Wilson kissing in Watkins's apartment after Wilson had moved next door to Watkins.

In October of 1998, Wilson gave Watkins a birthday gift of a power drill, which Watkins later returned in January 1999, testifying that the gift was inappropriate as it was too expensive, and based upon this gift, Wilson had started to make unwanted overtures to Watkins.

In January 1999, the parties' relationship deteriorated. On January 14, 1999, Watkins called the police to report Wilson's conduct of entering her property and leaving what she characterized as "threatening" letters in her petition for a restraining order. The three letters Wilson left at Watkins's residence were admitted into evidence. At trial, on cross-examination, Watkins admitted there were no threatening statements in the letters. She testified she found the letters threatening because she believed Wilson was obsessing over past trivial matters. At trial, Wilson admitted to leaving the letters for Watkins, but testified that he left the first letter to end their relationship.

Watkins also left some letters for Wilson, which were admitted into evidence. In addition, Watkins gave all her neighbors, including Wilson, gifts for Christmas 1998. On

cross-examination, Watkins admitted that on January 11, 1999, Wilson returned to Watkins her gift basket of fruit and gave her a letter stating: “Have a nice life.”

On January 15, 1999, Watkins called the police for a second time, to report that Wilson was on her property and looking through her windows. Wilson testified about this incident, admitting he was in the area between the two structures when a police officer approached and asked what he was doing. Wilson denied he was looking into Watkins’s apartment, and told the officer he was measuring for a new fence. Wilson admitted he may have told the officer that if Watkins did not want anyone looking in to her apartment, she should hang drapes.

In support of her request for a permanent injunction, Watkins testified that Wilson had followed her home on dates. She reported that on January 15, 1999, Wilson had followed her home after a date. After walking her date back to his car, Watkins testified that Wilson threatened her. Wilson appeared at the back of his house used profanity towards her, called her “stupid” and “bullheaded” and stated he was going to “take [her] down.” Watkins testified she was very frightened. On cross-examination, she admitted that this was the first threat made by Wilson and there were no witnesses.

The following day, on January 16, 1999, Wilson filed a police report against Watkins claiming she trespassed on his property in the area where he had been measuring to build the new fence. Watkins admitted that at some point that evening, she had stepped onto Wilson’s property between the two buildings. She testified she had done so to move a temporary lattice fence Wilson had set up between the two properties.

The next incident between the parties occurred on January 26, 1999. Watkins testified that at 6:00 a.m. as she was leaving for work, Wilson was hanging out his bathroom window and stated: "I am watching you. I am watching your every move." Watkins asked Wilson to leave her alone and stop peeking into her windows, or she would call the police. Wilson responded: "Go for it, bitch." Watkins testified this incident led her to file her petition for a restraining order the following day on January 27, 1999.

At trial, Wilson denied making these statements. He testified that on this particular morning he awoke to "scratching sounds" due to the fact that Watkins had removed a screen covering on his building, allowing her cat access to a crawl space beneath Wilson's house. When Wilson looked out his window to ascertain the cause of the noise, Watkins saw him and asked, "What is your problem?" Wilson responded: "My problem is you. You are making a racket."

Watkins testified that she never knew her cat was a problem. She denied removing the grating and testified that it had fallen off or a plumber had left it off and she had put it back on.

During trial, Watkins testified that after she obtained the initial restraining order, she felt Wilson did not take the order seriously and continued to have a threatening presence. For instance, Watkins testified that when she would arrive home, Wilson would open his garage door and stand there, not saying anything, but making his presence

known. For this reason, Watkins testified she purchased a camera to photograph and document Wilson's alleged violations of the initial restraining order.

At some point in January of 1999, Watkins had some floodlights installed above her entrance way. Wilson claimed that Watkins installed these floodlights to point directly into his bathroom in order to harass him. After the May 1999 trial, the court ordered Watkins to ensure these floodlights did not shine into Wilson's apartment.

Both parties attended a hearing on February 11, 1999. Shortly thereafter, on February 15, 1999, another incident occurred. Watkins testified that while she was having a repairman fix her garage door, Wilson emerged from his apartment and starting photographing her with a zoom lens. In response, Watkins took some pictures of Wilson taking pictures of her. As noted above, Wilson was later convicted of violating the temporary restraining order for having taken these pictures of Watkins.

At trial, Mark Walsh, Watkins's boyfriend, testified about an incident on February 26, 1999. While unloading Watkins's car, he observed Wilson standing in his garage, arms folded, glaring at Watkins. Wilson confronted Walsh and asked if he was Watkins's bodyguard. Walsh responded by asking Wilson to leave Watkins alone, to which Wilson replied he would "for now." At trial, Wilson denied making these statements.

Walsh also testified that during a barbeque with Watkins on March 20, 1999, Wilson circled the block numerous times in his car as he did on several other occasions. Walsh testified that later that evening, Wilson parked his car at the top of the hill, so his

car lights would shine into Watkins's apartment. Then later on, while Watkins and Walsh were barbequing in the area between the two buildings, Wilson hung a "no trespassing" sign from his bathroom window, overlooking Watkins's apartment. Walsh found these incidents threatening and was afraid for Watkins.

Wilson testified as to the events on March 20, 1999. He hung the "no trespassing" sign outside his bathroom window because he was prohibited by the restraining order from accessing the strip of property between the two apartment buildings, and he wanted to place Watkins on notice that she was trespassing. Wilson admitted to hanging the sign while Watkins was watching. He testified, however, that while hanging the sign, Watkins attempted verbally to goad him to stick his head out of the window in order to violate the restraining order. Wilson also testified that the sign had no effect on Watkins's trespassing as Watkins continued to garden this area of his property.

Reinsch, Wilson's girlfriend, corroborated Wilson's testimony regarding the no trespassing sign. The following day, Reinsch and Wilson filed a police report, claiming Watkins was gardening and trespassing Wilson's property despite the no trespassing sign. Watkins admitted to planting bushes and flowers on Wilson's property before the new fence was built.

On March 26, 1999, Wilson had a new fence erected between the properties. Watkins claimed at trial that Wilson left holes in the fence so he could peep on her. Wilson denied this, testifying the property owner wanted a lattice fence and lattice comes from the store with holes. Wilson testified he built the fence to keep cats out of his

property and from being awakened in the morning. Wilson also testified that he would have no problem with a contractor filling in the holes in the fence.

Norman Mastrian, the contractor who built the new fence between the properties, testified. He reported that when Watkins came home she was upset about the fence and attempted to interrupt his work. Mastrian testified that Watkins told him she was the property manager for both properties and that he could not build the fence. At some point, two of Watkins's friends arrived and started taking pictures of Mastrian building the fence. Mastrian testified that Watkins actually pulled apart a piece of the fence, but stopped upon the advice of her friends. Worried for his safety, Mastrian called the police.

Watkins denied damaging the fence, but admitted to touching it. She also admitted to taking pictures of the contractor building the fence.

As noted above, following trial, the court issued a permanent restraining order against Wilson and ordered him to pay \$7,000 of Watkins's attorney fees. The court also denied Wilson's request for a restraining order against Watkins, as well as his request for attorney fees.

CONTENTIONS

Wilson contends as follows:

1. There was insufficient evidence to support the trial court's order granting Watkins a permanent restraining order;
2. There was substantial evidence to support Wilson's petition seeking a restraining order against Watkins; and

3. There was insufficient evidence to support the trial court's order awarding Watkins \$7,000 in attorney fees.

DISCUSSION

1. *Standard of Review*

The issue presented is whether the trial court's findings and judgment are supported by substantial evidence. "When a trial court's factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins and ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. *If such substantial evidence be found, it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.*" (*Bowers v. Bernards* (1984) 150 Cal. App.3d 870, 873-874, original italics.)

" 'Substantial evidence' is 'such relevant evidence as a reasonable [person] might accept as adequate to support a conclusion.' ' [Citation.] '[I]f the word "substantial" means anything at all, it clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with "any" evidence. It must be reasonable in nature, credible, and of solid value; it must

actually be “substantial” proof of the essentials which the law requires in a particular case.’ ” (*Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112, 134.)

“The trier of fact is the exclusive judge of the credibility of the witnesses.

[Citations.] The trial court is free to disbelieve and reject the testimony of witnesses even though they are uncontradicted and unimpeached.” (*Maslow v. Maslow* (1953) 117 Cal.App.2d 237, 243, overruled on another ground, *Liodas v. Sahadi* (1977) 19 Cal.3d 278, italics omitted.) The testimony of a single witness, including that of a party, may be sufficient to establish substantial evidence. (*Jensen v. BMW of North America, Inc.*, 35 Cal.App.4th at p. 134.)

“In assessing whether substantial evidence supports the requisite elements of willful harassment, as defined in Code of Civil Procedure section 527.6, we review the evidence before the trial court in accordance with [all] the customary rules of appellate review. We resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge in all legitimate and reasonable inferences to uphold the finding of the trial court if it is supported by substantial evidence which is reasonable, credible and of solid value.” (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.) In other words, “ ‘[a] judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions [and ambiguities] are indulged in favor of correctness.’ [Citations.]” (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 631.)

“The burden of demonstrating error rests on the appellant.” (*Id.* at p. 632.)

Applying the foregoing criteria, we look to the entire record for substantial evidence supportive of the trial court's findings of fact.

2. *The Trial Court's Order Granting Watkins a Permanent Restraining Order Against Wilson Is Supported by Substantial Evidence*

Wilson asserts on appeal that the trial court's order granting Watkins a permanent restraining order against Wilson is not supported by substantial evidence. We disagree. We find that the entire record contains substantial evidence to support the trial court's implicit finding of unlawful harassment of Watkins by Wilson.

The elements of unlawful harassment, as defined by the governing statute, Code of Civil Procedure section 527.6,¹ are as follows: “(1) ‘a knowing and willful course of conduct’ entailing a ‘pattern’ of ‘a series of acts over a period of time, however short, evidencing a continuity of purposes’; (2) ‘directed at a specific person’; (3) ‘which

¹ Unless otherwise indicated, all statutory references are to the Code of Civil Procedure. Section 527.6 provides in pertinent part: “(a) A person who has suffered harassment as defined in subsection (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section. [¶] (b) For purposes of this section, ‘harassment’ is . . . a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff. [¶] As used in this subdivision: [¶] . . . [¶] (3) ‘Course of conduct’ is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means [¶] (d) . . . At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment.”

seriously alarms, annoys, or harasses the person’; (4) ‘which serves no legitimate purpose’; (5) which ‘would cause a reasonable person to suffer substantial emotional distress’ and ‘actually cause[s] substantial emotional distress to the plaintiff’; and (6) which is not a ‘[c]onstitutionally protected activity.’ ” (*Schild v. Rubin*, 232 Cal.App.3d at p. 762.)

Wilson makes two arguments that the judgment is not supported by substantial evidence. First, Wilson attacks the credibility of Watkins. Second, Wilson argues the trial court committed “evidentiary errors,” and without certain inadmissible evidence, there is no evidence to support the trial court’s findings. Wilson does not inform us, however, which of the six elements that must be found for a violation of section 527.6 is not supported by substantial evidence.

First, as to the issue of credibility, as we must, we resolve all issues of credibility in favor of the prevailing party. (*Schild v. Rubin, supra*, 232 Cal.App.3d at p. 762.) Second, each of the Watkins’s alleged “inconsistencies” was presented to the trial court below, including: Watkins’s alleged inconsistent statements about the nature and length of the parties’ romantic relationship; Watkins’s alleged inconsistent statements about whether the letters from Wilson were “threatening;” why Watkins waited until January 27, 1999 to file her petition for a restraining order; and whether Watkins damaged the fence being built by Wilson’s contractor.

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The trial court is the exclusive judge of credibility. We presume the trial court, having considered Watkins's alleged inconsistencies, found her to be a credible witness. We will not reverse the judgment below based upon assertions of lack of credibility.

Second, Wilson argues that the judgment below was based upon "evidentiary errors." Specifically, Wilson argues that the original restraining order was based upon inadmissible evidence--Watkins's summary of Wilson's letters, rather than the letters themselves and hearsay. Because of this alleged error, Wilson claims his criminal conviction for violation of the initial restraining order was erroneous, as was the trial court's consideration of his criminal conviction in this case when it issued the permanent injunction. Wilson also argues the original restraining order was invalid because Watkins waited over ten days after the January 15, 1999 police report to file her petition. Neither argument has merit.

The trial court properly considered Wilson's criminal conviction for violation of the initial restraining order when it issued the permanent injunction. We will not entertain any arguments that his criminal conviction was in error. At the time of his violation, Wilson had notice of the restraining order. If Wilson believed the restraining order was invalid at the time of his violation, his remedy was not to test the validity of the order by violating it. Wilson's attack upon his criminal conviction for violation of the initial restraining order should have been made in his criminal trial or on appeal from that judgment, not by way of this appeal.

Without citing any authority, Wilson also argues the original restraining order was invalid because Watkins waited over ten days to file her petition after the January 15, 1999 police report. This argument has no merit. Neither section 527.6 nor Family Code section 6320 (cited by Wilson) contains a ten-day filing requirement. In addition, we note that Watkins was diligent in obtaining the restraining order, testifying she petitioned for, and received, the restraining order the day after Wilson stated he was “watching [her] every move.”

Finally, even if the trial court had not considered Wilson’s criminal conviction, the above statement of facts contains other independent admissible substantial evidence – facts of ponderable legal significance – to support the trial court’s implicit finding that Wilson violated section 527.6. Wilson engaged in a pattern of activity composed of verbal threats, inappropriate letters, and other conduct, directed at Watkins, which seriously harassed Watkins, and served no legitimate purpose, including any constitutionally protected purposes. In addition, implicit in the trial court’s finding, with which we agree, is that threats such as “I am watching you” and “I will take you down” could cause a reasonable person to suffer substantial emotional distress. Finally, Watkins testified that she suffered such distress because she was very frightened by Wilson.

We find the trial court’s judgment granting Watkins a permanent restraining order against Wilson is supported by substantial evidence. Accordingly, we affirm.

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3. *The Trial Court's Denial of Wilson's Petition for a
Restraining Order Against Watkins Was Proper*

Wilson claims on appeal that the trial court violated his right to due process by treating him differently than Watkins, asserting there was substantial evidence to support his request for a restraining order against Watkins. Again, we disagree.

Pursuant to section 527.6, Wilson must show unlawful harassment by clear and convincing evidence before a court can issue an injunction. Unlawful harassment may be based upon (1) “unlawful violence;” (2) “a credible threat of [unlawful] violence;” or (3) “a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose.” (§ 527.6, subd. (b).)

Pursuant to *Jensen v. BMW of North America, Inc.*, *supra*, 35 Cal.App.4th at page 134, substantial evidence must be “of ponderable legal significance” and is not synonymous with “any” evidence.

Wilson has simply failed to present substantial evidence of unlawful harassment as defined in section 527.6. All Wilson offers as evidence of unlawful harassment by Watkins are slight property trespasses to an area of his property that is not readily accessible by him, brief interferences with fences, some pictures being taken, and a light shined into his bathroom. At trial, Watkins admitted to gardening the small area across her walkway located on Wilson's property. As to the fences, Watkins admitted she

moved Wilson's temporary lattice fence, but denied damaging the fence being built by the contractor on Wilson's property.

As to photographing Wilson, Watkins testified she felt Wilson was not taking the restraining order seriously. She stated she took pictures of Wilson to document his violations of the restraining order. Lastly, as to the light above her entranceway, Watkins testified she placed it there for security purposes.

Based upon the foregoing, we agree with the trial court's implicit finding that there was insufficient evidence of unlawful harassment of Wilson by Watkins. Accordingly, we affirm the trial court's denial of Wilson's petition for a restraining order against Watkins.

4. *There Is Substantial Evidence to Support the Trial*

Court's Award of Attorney Fees to Watkins

Watkins requested \$12,500 in attorney fees and costs. The trial court awarded her \$7,000. Section 527.6, subdivision (i), provides that the prevailing party in an action seeking an injunction to prevent harassment "may be awarded court costs and attorney's fees, if any." (*Ibid.*)

Wilson argues that because there is no substantial evidence to support issuing Watkins a permanent injunction against Wilson, she is not the prevailing party, and is therefore not entitled to attorney fees. Because we find there is substantial evidence in the record to support the trial court's issuance of an injunction against Wilson, and because the trial court properly denied Wilson's request for an injunction, Watkins is the

prevailing party and entitled to attorney fees. Thus, we find the trial court's award of \$7,000 to Watkins was proper. Accordingly, we affirm the order.

DISPOSITION

The trial court's judgment, granting Watkins a permanent restraining order against Wilson, as well as an award of \$7,000 in attorney fees, and denying Wilson a restraining order against Watkins, is affirmed. Costs on appeal are awarded to Watkins, the respondent.

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KITCHING, J.

We concur:

KLEIN, P.J.

CROSKEY, J.